

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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|-------------------------------|---|-------------------------------|
| _____ |) | |
| Lori Ludlam and Kevin Ludlam, |) | |
| |) | |
| <u>Plaintiffs,</u> |) | |
| |) | |
| v. |) | Civil Action No. 11-11903-LTS |
| |) | |
| Marlborough Public Schools, |) | |
| |) | |
| <u>Defendant.</u> |) | |
| _____ |) | |

ORDER FOR REASSIGNMENT AND
REPORT AND RECOMMENDATION

September 11, 2012

SOROKIN, C.M.J.

Plaintiffs Lori and Kevin Ludlam brought this action against the Marlborough Public Schools under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, and the Americans with Disabilities Act, 42 U.S.C. § 12101, on October 26, 2011 (Docket # 1). Thereafter, the case was assigned to the undersigned Magistrate Judge (Docket # 3). After the Court denied their application to proceed in forma pauperis (Docket # 4), the Plaintiffs paid the required filing fee. In March 2012, the Court directed the Plaintiffs to serve the Defendant (Docket # 7), and summons were issued (Docket # 8, 9).

On July 11, 2012, when more than 120 days had passed and no proof of service had been filed, the Court issued an Order stating the action would be dismissed unless, within twenty days, the Plaintiffs either filed proof of service, or made a showing of good cause for their failure to do so (Docket # 10). The Plaintiffs have done neither, and the time for doing so has long passed.

Accordingly, it is ORDERED that the Clerk shall reassign this case to a District Judge, as

all parties have not consented to final assignment to a Magistrate Judge pursuant to 28 U.S.C. § 636(c). Because the Plaintiffs have failed to respond to the Court's July 11, 2012 Order, and for the reasons stated in that Order, this Court hereby RECOMMENDS to the District Judge to whom this case is reassigned that this action be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m) and Local Rule 4.1(b).¹

SO ORDERED.

/s / Leo T. Sorokin
Leo T. Sorokin
United States Magistrate Judge

¹The Parties are hereby advised that any party who objects to these proposed findings and recommendations must file a written objection thereto within fourteen days of receipt of this Report and Recommendation. The written objections must identify with specificity the portion of the proposed findings, recommendations, or report to which objection is made, and the basis for such objections. See Fed. R. Civ. P. 72; 28 U.S.C. § 636(b). The parties are further advised that the United States Court of Appeals for this Circuit has repeatedly indicated that failure to comply with Rule 72(b) will preclude further appellate review of the District Court's order based on this Report and Recommendation. See Keating v. Sec'y of Health & Human Servs., 848 F.2d 271 (1st Cir. 1988); United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986); Scott v. Schweiker, 702 F.2d 13, 14 (1st Cir. 1983); United States v. Vega, 678 F.2d 376, 378-79 (1st Cir. 1982); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603 (1st Cir. 1980); see also Thomas v. Arn, 474 U.S. 140 (1985).